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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,483	04/15/2005	Martin Devenney	HNDA2014.2(H102-0607-US02	2764

  

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SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102		

  

EXAMINER	
HODGE, ROBERT W	

  

ART UNIT	PAPER NUMBER
1795	

  

NOTIFICATION DATE	DELIVERY MODE
03/03/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/506,483	DEVENNEY ET AL.	
	Examiner	Art Unit	
	ROBERT HODGE	1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

DETAILED ACTION

*Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-15, drawn to an alloy.

Group II, claim(s) 16-18, drawn to a supported electrocatalyst powder.

Group III, claim(s) 19-21, drawn to a fuel cell electrode.

Group IV, claim(s) 22-30, drawn to a fuel cell.

Group V, claim(s) 31-34, drawn to a method for the electrochemical conversion of a hydrogen-containing fuel and oxygen to reaction products and electricity in a fuel cell.

Group VI, claim(s) 35, drawn to an unsupported alloy layer.

The inventions listed as Groups I-VI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature is an alloy comprising platinum at a concentration that is between about 10 and about 80 atomic percent, zinc, and at least one of nickel and iron, this feature has been found in the prior art as has been provided in the International Search Report and therefore because said feature is known in the art unity is lacking.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

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If applicant elects group I above than applicant must elect from the following species:

Species 1 – an alloy comprising platinum, zinc and nickel

Species 2 – an allow comprising platinum zinc and iron

If applicant elects Species 1, than applicant must elect one species for the concentration of the overall alloy selected from:

Species 1a - concentration of platinum that is between about 10 and about 80 atomic percent, a concentration of zinc that is between about 5 and about 60 atomic percent, and a concentration of nickel that is between about 10 and about 70 atomic percent

Species 1b - concentration of platinum that is between about 15 and about 50 atomic percent, a concentration of zinc that is between about 15 and about 50 atomic percent, and a concentration of nickel that is between about 20 and about 60 atomic percent.

Species 1c - concentration of platinum that is between about 20 and about 35 atomic percent, a concentration of zinc that is between about 20 and about 40 atomic percent, and a concentration of nickel that is between about 30 and about 55 atomic percent.

Species 1d - concentration of platinum that is between about 20 and about 30 atomic percent, a concentration of zinc that is between about 5 and about 15 atomic percent, and a concentration of nickel that is between about 60 and about 70 atomic percent.

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If applicant elects Species 2, then applicant must elect one species for the concentration of the overall alloy selected from:

Species 2a - concentration of platinum that is between about 10 and about 80 atomic percent, a concentration of zinc that is between about 2 and about 70 atomic percent, and a concentration of iron that is between about 5 and about 80 atomic percent.

Species 2b - concentration of platinum that is between about 20 and about 60 atomic percent, a concentration of zinc that is between about 5 and about 50 atomic percent, and a concentration of iron that is between about 10 and about 80 atomic percent.

Species 2c - concentration of platinum that is between about 35 and about 50 atomic percent, a concentration of zinc that is between about 5 and about 35 atomic percent, and a concentration of iron that is between about 20 and about 60 atomic percent.

Species 2d - concentration of platinum that is between about 40 and about 60 atomic percent, a concentration of zinc that is between about 10 and about 30 atomic percent, and a concentration of iron that is between about 25 and about 50 atomic percent.

Species 2e - concentration of platinum that is between about 20 and about 40 atomic percent, a concentration of zinc that is between about 20 and about 50 atomic percent, and a concentration of iron that is between about 25 and about 40 atomic percent.

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If applicant elects group IV above then applicant must elect from the following species:

One species for the Fuel selected from:

Species A – Hydrogen

Species B – Hydrocarbon-based

One Species for the location of the alloy selected from:

Species C1 - on the surface of the proton exchange membrane and in contact with the anode.

Species C2 - on the surface of the anode and in contact with the proton exchange membrane.

Species C3 - on the surface of the proton exchange membrane and in contact with the cathode.

Species C4 - on the surface of the cathode and in contact with the proton exchange membrane.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: claims 1 and 22.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the special technical feature is an alloy comprising platinum at a concentration that is between about 10 and about 80 atomic percent, zinc, and at least one of nickel and iron, this feature has been found in the prior art as has been provided in the International Search Report and therefore because said feature is known in the art unity is lacking.

In light of the complexity of the restriction requirement for this application, no telephone communication regarding the restriction has been made. See MPEP § 812.01.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HODGE whose telephone number is (571)272-2097. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Hodge/  
Examiner, Art Unit 1795